IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

C.W.P. No. 19134 of 2006

Date of Decision: 4.12.2006

Hazari Lal and others

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. B.K. Bagri, Advocate
for the petitioners.

JUDGMENT

M.M. KUMAR, J.

The prayer made by the petitioners in the instant petition is for issuance of direction to the respondents to grant one increment at the time of grant of first Higher Standard pay scale and one increment at the time of grant of second Higher Standard pay scale in the scale of Rs. 1400-2600 or 1600-2660.

The petitioners, who were appointed as JBT teachers in the respondent department, were granted first Higher Standard pay scale w.e.f. 1.1.1994 and those who have completed 20 years service

prior to 1.1.1994, were also grated second Higher Standard pay scale. Some of the petitioners have already retired from service as detailed in para 2 of the petition. It is claimed that there were no chances of promotion for JBT teachers even after putting in a number of years of service and a large number of JBT teachers retired as such without any promotion. In light of the judgment of Hon'ble the Supreme Court in the case of **Raghunath Parshad v. The Secretary Home, 1988(1) SLR 347**, in relation to the question of stagnation in service, avenues of promotion were created for JBT teachers to the post of Head Teacher Primary School and consequently some of the petitioners were promoted as Head Teacher prior to their retirement. By that time they had served for more than 20 years.

In compliance with the directions of Hon'ble the Supreme Court in Raghunath Parshad's case (supra), the respondent State issued a notification dated 8.2.1994 (P-2) and made provisions for grant of higher standard pay scales to such employees who were not promoted despite rendering 10 years and 20 years of service respectively i.e. First Higher Standard Pay Scale on completion of 10 years service and on completion of 20 years service, Second Higher Standard Pay Scale. It has been asserted that the standard pay scales were granted in lieu of promotion because the Government was unable to grant first and second promotion to JBT teachers during service, therefore, standard pay scales must be treated like promotion. Accordingly, the petitioners have claimed that under Rule 4.4 of the Punjab Civil Services Rules (as applicable to Haryana) one additional

increment is admissible at the time of grant of higher standard pay scale. They have also sent a legal notice dated 25.5.2004 (P-1) to the respondents for grant of increment on completion of 10/20 years of service. It is conceded position that while working as JBT teachers the petitioners have been granted the first Higher Standard Pay Scale of Rs. 1400-2600 on completion of 10 years of service and pay scale of Rs. 1600-2660 on completion of 20 years of service. The prayer now made is that according to Rule 4.4(1)(i) of the Civil Service Rules, Volume I, Part I (for brevity 'the Rules') the petitioners are entitled to the grant of one promotional increment.

After hearing learned counsel, we are of the considered view that no relief could be granted to the petitioners as they have already enjoyed better pay scale on account of the policy of the State Government to grant the higher standard pay scale in order to break stagnation after they have rendered 10/20 years of service. It would be appropriate to make a reference to Rule 4.4(a) of the Rules which reads as under:

> "4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time scale of pay is regulated as follows-
>
> (a) If he holds a lien on a permanent post, other than a tenure post, or would hold lien on such a post, had his, lien not been suspended -
>
> (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule

4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post;

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum of the time scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay.

(iii) When appointment to the new post is made on his own request under Rule 3.17(a) and maximum pay in the time scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

The matter is not res-integra. In a catena of judgments, their Lordships of Hon'ble the Supreme Court has taken the view that in such circumstances no benefit of Rule 4.4(a) of the rules would be

available. In the case of **State of Haryana and another v. Partap Singh and others, JT 2006 (12) SC 406**, this very question was considered when certain JBT teachers on acquiring the higher qualification of B.A./B.Ed. had initially approached this Court, which allowed the benefit of Rule 4.4 of the Rules. However, reversing the view taken by this Court and after referring to Rule 4.4(a), their Lordships of Hon'ble the Supreme Court observed as under:

> " The above rule says that when appointment to the new post involves the assumption of duties or responsibilities of greater importance than those attaching to such permanent post, the incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post meaning thereby that the promotion which involves responsibilities of greater importance then in that case the incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post. That means he will be entitled to one increment in the old post. But in the present case, the respondents are already drawing the pay scale of the post of Master i.e. higher post. As such, where is the question of granting them one increment further now? Under Rule 4.4 it could have been possible to grant them fixation if they were continuing in the old scale of JBT teachers and on their promotion to the post of Master, then certainly they

would have been entitled to fixation of pay giving them the initial pay at the stage of time scale next above their substantive pay in respect of the old post. But they are already fixed in the pay scale of higher post of Master which though legitimately they were not entitled to because of the change in the policy but they continue in the higher pay scale despite the change in the policy and the Government did not take any further steps to put the house in proper order. Be that as it may, since the respondents were drawing the higher pay scale on acquiring of higher educational qualifications, i.e the Master's pay scale, and now only regular orders have been passed, promoting them as Master, there is no question of again fixing them next above their substantive pay in respect of the old post. They are not holding the old post any more and they were not drawing the salary of JBT teachers i.e. the old post. Therefore, there is no question of granting them the initial pay the stage of time scale next above their substantive pay in respect of the old post."

Similar view has been taken by Hon'ble the Supreme Court in the cases of **State of Punjab v. Lal Singh, (1996) 11 SCC 657; Union of India v. Ashok Kumar Banerjee, (1998) 5 SCC 242** and **State of Haryana v. Sumitra Devi, (2004) 12 SCC 322.**

In view of the above, we find no merit in the instant petition and accordingly the same is dismissed.

(M.M. KUMAR)

JUDGE

(M.M.S. BEDI)
JUDGE

December 4, 2006
Pkapoor